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April 18, 2016

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Re: Notice of Intent to Sue Under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

To Whom It May Concern:

This letter constitutes the NOTICE OF INTENT TO SUE Carmeuse Lime & Stone ("Carmeuse") for violations of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.* arising out of Carmeuse's unlawful filling activities relating to its dock collapse and unlawful discharge of unauthorized material into the Rouge River. Specifically, this letter gives notice of Noticer's intent to seek redress for the unlawful discharge of material into the waters of the Rouge River.

I. Persons Giving Notice

St. Marys Cement, Inc. ("St. Marys") is a Delaware corporation which owns and operates a cement production facility on the Rouge River, located at 9333 Dearborn Street, Detroit, Michigan 48209. St. Marys can be contacted through the undersigned counsel at the address and phone number above.

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II. Persons Responsible for the Alleged Violation

Carmeuse, as the owner and operator of the limestone processing facility at the site of the dock collapse on the Rouge River, located at 25 Marion Avenue, River Rouge, MI 48218, is responsible for the continuing violations that give rise to this notice.

III. Location and Date of the Violation

Carmeuse's violations continue to occur near 25 Marion Avenue, River Rouge, MI 48218. The violations that are subject of this notice have been continuing since on or about August 23, 2015 to the present day. The nature of this harm to St Marys is both irreparable and immediate, and beyond measurable damages.

IV. Description of Carmeuse's CWA Violation

Pursuant to sections 505(a) and (b) of the CWA, 33 U.S.C. §§ 1365(a)-(b), Noticers intend to sue Carmeuse for violating effluent standards and limitations under section 505(f) of the CWA, 33 U.S.C. § 1365(f), by discharging pollutants into the waters of the United States without permit required by CWA section 301(a), 33 U.S.C. § 1311(a). Further, through the dock collapse, Carmeuse has caused and continued unlawful filling activities into waters of the United States not authorized by an appropriate permit under 33 U.S.C. § 1344.

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States except when pursuant to, and in compliance with, a permit. *See, e.g.*, 33 U.S.C. § 1311(a); 33 U.S.C. §§ 1342. The Act defines "pollutant" to include "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). The CWA defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source" and "any addition of any pollutant to the waters of the contiguous zone or ocean from any point source other than a vessel or other floating craft." 33 U.S.C. § 1362(12). "Point source" is defined by the CWA as "any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

On or about August 23, 2015, the natural dock on the Carmeuse property collapsed, causing a combination of river bank/bottom substrate, river sediments, materials used in the revetment on Carmeuse's property, and stockpiled material, most of which was limestone, to be unlawfully discharged into the Rouge River. The August 25, 2015 Restoration Order issued by the United States Army Corps of Engineers identified Carmeuse as *solely responsible* for the dock collapse. Moreover, per the US Army Corps Restoration Order, Carmeuse's discharges of refuse into the navigable waters of the Rouge River are unlawful under Section 13 of the Rivers and Harbors Act (also known as the Refuse Act, 33 U.S.C. § 407). The continuing presence of these materials in the Rouge River represent fill activities which are unpermitted under 33 U.S.C. § 1344.

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Due to the dock collapse and resulting unlawful discharge into the Rouge River, the United States Coast Guard closed the Rouge River to all traffic on August 24, 2015. During that time, Carmeuse dredged some, but not all, of the unlawfully discharged material from the navigable waters of the Rouge River. Dredging ceased and the Federal Navigation Channel was formally reopened to commercial traffic on September 11, 2015, with cautionary restrictions to mariners regarding the continuing shoaling conditions. Despite the reopening of the river, much of the unlawfully discharged material was not removed by Carmeuse from the river as required by the US Army Corps of Engineers Restoration Order, and therefore remained in the Rouge River.

The US Coast Guard again closed the river near the Carmeuse property from September 22, 2015 to September 24, 2015, and Carmeuse resumed dredging operations during that time period. Even after this additional dredging occurred, however, the unlawfully discharged material *was still not* completely removed from the Rouge River as required by the Restoration Order. As of April 18, 2016 the Rouge River has neither been completely dredged by Carmeuse nor returned to its pre-collapse depths and contours as required by the Restoration Order.

The unlawfully discharged material qualifies as a "pollutant," as it contains "rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). The collapsed dock on the Carmeuse property from which the material was unlawfully discharged into the Rouge River qualifies as a "point source" of these pollutants. 33 U.S.C. § 1362(14). The Rouge River qualifies as navigable waters of the United States. 33 U.S.C. § 1362(7). The continued presence of these materials in the Rouge River represents an ongoing CWA violation which lacks appropriate permitting.

The foregoing description of Carmeuse's CWA violations is not exhaustive. Noticers intend to include in their lawsuit additional violations, legal or factual, revealed in the course of investigation or discovery.

* * * * *

Noticers believe this Notice of Intent to Sue sufficiently states grounds for filing suit under the CWA. Each day the above-described violations are not remedied constitutes a separate violation under the applicable regulations and Carmeuse will remain in violation until the contamination described is remedied. The CWA and 40 CFR § 19.4 authorizes penalties up to \$137,500 per day for each violation of the CWA. At the close of the 60-day CWA Notice Period, Noticers intend to file a citizen suit against Carmeuse for the violations discussed above. Noticers intend to seek injunctive relief, penalties, and attorneys' fees and costs, including expert witness fees.



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During the Notice Period, Noticers will be willing to discuss effective remedies for the violations noted in this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew P. Kennison".

Matthew P. Kennison